

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT ARUA**  
**CRIMINAL CASE No. 0051 OF 2016**

**UGANDA** ..... **PROSECUTOR**

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**VERSUS**

**OJOK PATRICK** ..... **ACCUSED**

10 **Before: Hon Justice Stephen Mubiru.**

**SENTENCE AND REASONS FOR SENTENCE**

This case has come up today 23<sup>rd</sup> November, 2018 in a special session for plea bargaining. The  
15 accused is indicted with the offence of Aggravated Defilement c/s 129 (3), (4) (a), (b) and (c) of  
*The Penal Code Act*. It is alleged that On the 7<sup>th</sup> and 25<sup>th</sup> February, 2015 at Tetugu village,  
Ongako sub-county in Gulu District, being a person infected with HIV / AIDS and her guardian,  
the accused performed and unlawful sexual act with Apio Eunice, a girl aged 11 years.

20 When the case was called, the learned State Resident Attorney, Ms. Catherine Nakaggwa has  
reported that she successfully negotiated a plea bargain with the accused and his counsel. The  
court has invited the State Attorney to introduce the plea agreement and obtained confirmation of  
this fact from defence counsel on state brief, Mr. Walter Ladwar Okidi. The court has ascertained  
that the accused has full understanding of what a guilty plea means and its consequences, the  
25 voluntariness of the accused's consent to the bargain and appreciation of its implication in terms  
of waiver of the constitutional rights specified in the first section of the plea agreement. The  
Court being satisfied that there is a factual basis for the plea, and having made the finding that  
the accused made a knowing, voluntary, and intelligent plea bargain, and after he has executed a  
confirmation of the agreement, has gone ahead to receive the agreement to form part of the  
30 record. The accused has then been allowed to take plea whereupon a plea of guilty has been  
entered.

The court has invited the learned Resident State Attorney to narrate the factual basis for the guilty plea, whereupon she has narrated the following facts; on 7<sup>th</sup> February, 2015 in Gulu District, the victim Apio aged 11 and a step daughter to the accused was sleeping at night while the mother was away when the accused ordered her to his main house where he had sexual intercourse with her and on 25<sup>th</sup> February, 2015 the victim was in a nearby bush collecting firewood when the accused met her and had sexual intercourse with her. He was arrested and found to be 28 years, mentally sound and HIV positive. The victim was found to be 11 years old and he had bruises on her genitals and a perforated hymen. The respective medical examination reports too have been admitted as part of the facts.

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Upon ascertaining from the accused that the facts as stated are correct, he has been convicted on his own plea of guilty for the offence of Aggravated Defilement c/s 129 (3), (4) (a), (b) and (c) of *The Penal Code Act*. In justification of the sentence of ten (10) years' imprisonment proposed in the plea agreement, the learned Resident State Attorney has stated that; the age difference of 17 years and he was a step-father to the victim and had the duty to protect her. There was a breach of trust as her step father. Learned defence counsel has stated the key mitigating factors considered to have been that; he is a first offender, very remorseful, sickly with a swollen scrotum, abdominal pain that is persistent. Poor eyesight. He has spent three years three months on remand. By way of *allocutus*, the accused has stated that; he prays for forgiveness. He will not do this gain. He has pus flowing from his ears. His wife left after the incident.

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I have reviewed the proposed sentence in light of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*. I have also reviewed current sentencing practices for offences of this nature. In this regard, I have considered the case of *Agaba Job v. Uganda C.A. Cr. Appeal No. 230 of 2003* where the court of appeal in its judgment of 8<sup>th</sup> February 2006 upheld a sentence of 10 years' imprisonment in respect of an appellant who was convicted on his own plea of guilty upon an indictment of defilement of a six year old girl. In the case of *Lubanga v. Uganda C.A. Cr. Appeal No. 124 of 2009*, in its judgment of 1<sup>st</sup> April 2014, the court of appeal upheld a 15 year term of imprisonment for a convict who had pleaded guilty to an indictment of aggravated defilement of a one year old girl. In another case, *Abot Richard v. Uganda C.A. Crim. Appeal No. 200 of 2004*, in its judgment of 6<sup>th</sup> February 2006, the Court of

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Appeal upheld a sentence of 8 years' imprisonment for an appellant who was convicted of the offence defilement of a 13 year old girl but had spent three years on remand before sentence. In *Lukwago v. Uganda C.A. Crim. Appeal No. 36 of 2010* the Court of appeal in its judgment of 6<sup>th</sup> July 2014 upheld a sentence of 13 years' imprisonment for an appellant convicted on his own plea of guilty for the offence of aggravated defilement of a thirteen year old girl. Lastly, *Ongodia Elungat John Michael v. Uganda C.A. Cr. Appeal No. 06 of 2002* where a sentence 5 years' imprisonment was meted out to 29 year old accused, who had spent two years on remand, for defiling and impregnating a fifteen year old school girl.

10 A plea of guilty offered readily before commencement of trial usually results in a discount of anywhere up to a third of the sentence that would otherwise be imposed after a full trial. Having considered the sentencing guidelines and the current sentencing practice in relation to offences of this nature, I consider the sentence proposed in the plea agreement entered into by the accused, his counsel, and the State Attorney to be appropriate.

15 In accordance with Article 23 (8) of the Constitution and Regulation 15 (2) of The *Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*, to the effect that the court should deduct the period spent on remand from the sentence considered appropriate, after all factors have been taken into account, I observe that the convict has been in custody since 20 6<sup>th</sup> August, 2015 and I hereby take into account and set off three years and three months as the period the convict has already spent on remand. I therefore sentence the convict to a term of imprisonment of six (6) years and nine (9) months, to be served starting today.

Having been convicted and sentenced on his own plea of guilty, the convict is advised that he has 25 a right of appeal against the legality and severity of this sentence, within a period of fourteen days.

Dated at Gulu this 23<sup>rd</sup> day of November, 2018

.....  
Stephen Mubiru  
Judge,  
23<sup>rd</sup> November, 2018.

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